IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8678 OF 2005

Appasaheb @ Ganpat Dinkar
Deshmukh and Ors. ...Petitioners

Versus

Dattatraya Shivram Gaikwad
and Ors. ....Respondents

S.R.Nargolkar, Adv. for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

27.11.2007

P.C. :

1. Perused the petition and the annexures thereto including the impugned order.

2. For the reasons that are set out in the application seeking condonation of delay, I am of the view that sufficient cause was made out for condoning the same. The lower appellate court ought not to have adopted a

hyper-technical approach, inasmuch as the delay of eleven months was explained by the petitioner applicant and he pointed out that the cause for the delay is the serious ailment of his wife. In such circumstances, when the respondent also did not file an affidavit, the lower appellate court ought to have adopted a justice oriented approach and condoned the delay. The application in that behalf is therefore allowed. Delay of eleven months is condoned. However, the petitioner Nos.2 and 3 to pay costs quantified at Rs.5000/- to the respondents in the Trial Court within a period of two weeks from today. On production of proof of costs being paid, the lower appellate court to register the said Appeal and post it for hearing and final disposal on merits and in accordance with law.

sd/-

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